



MAR 16 2018

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March 13, 2018

Karlo P. Turner
Agent for Service of Process
Otay Metal Mart, Inc.
1593 Woodlark Court
Chula Vista, CA 91911

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Otay Metal Mart, Inc.
195 Mace Street
Chula Vista, CA 91911

Donald L Daley III
Agent for Service of Process
DIII Industrial CV, LLC
4211 Ponderosa Avenue Suite C
San Diego ca 92123

Ralph Turner
Chief Financial Officer
1593 Woodlark CT
Chula, Vista, CA 91911

Re: **Clean Water Act Notice of Intent to Sue/60-Day Notice Letter**
Otay Metal Mart

Dear Mr. Turner:

Please accept this letter on behalf of the Coastal Environmental Rights Foundation (CERF) regarding Otay Metal Mart, Inc's ("Otay Metal Mart") failure to enroll in the State Water Resources Control Board Water Quality Order Nos. 97-03-DWQ and 2014-0057-DWQ, Natural Pollutant Discharge Elimination System (NPDES), General Permit No. CAS000001, and Waste Discharge Requirements for Discharges of Storm Water Associated With Industrial Activities Excluding Construction Activities (General Industrial Permit).¹ This letter constitutes CERF's notice of intent to sue for violations of the Clean Water Act and General Industrial Permit for Otay Metal Mart's facility located at 195 Mace Street, Chula Vista, CA ("Facility"), as set forth in more detail below.

Section 505(b) of the Clean Water Act requires that sixty (60) days prior to the initiation of a citizen's civil lawsuit in Federal District Court under Section 505(a) of the Act, a citizen must give notice of the violations and the intent to sue to the violator, the Administrator of the U.S. Environmental Protection Agency, the Regional Administrator of the U.S. Environmental Protection Agency for the region in which the violations have occurred, the U.S. Attorney General, and the Chief Administrative Officer for the State in which the violations have occurred (33 U.S.C. § 1365(b)(1)(A)). This letter provides notice of Otay Metal Mart's Clean Water Act violations and CERF's intent to sue.

¹ The General Industrial Permit amendments, pursuant to Order No. 2014-0057-DWQ, become effective July 1, 2015. All references are to the General Industrial Permit in effect at the time of the violation.

I. Coastal Environmental Rights Foundation (CERF)

CERF is a non-profit public benefit corporation organized under the laws of the State of California with its main office located at 1140 S. Coast Highway 101, Encinitas, CA. CERF is dedicated to the preservation, protection, and defense of the environment, the wildlife, and the natural resources of the California Coast. Members of CERF use and enjoy the waters into which pollutants from Otay Metal Mart's ongoing illegal activities are discharged, namely Otay River, San Diego Bay, and the Pacific Ocean. The public and members of CERF use these receiving waters to fish, sail, boat, stand up paddle board, kayak, surf, swim, scuba dive, birdwatch, view wildlife, and to engage in scientific studies. The discharge of pollutants by Otay Metal Mart affects and impairs each of these uses. Thus, the interests of CERF's members have been, are being, and will continue to be adversely affected by the Facility's Owners and/or Operators' failure to comply with the Clean Water Act and the General Industrial Permit.

II. Storm Water Pollution and the General Industrial Permit

A. Duty to Enroll and Unpermitted Discharge

The Clean Water Act prohibits the "discharge of any pollutant," unless otherwise allowed by permit. 33 U.S.C. § 1311(a). A NPDES permit must be issued before any pollutant is discharged into Waters of the United States from a point source. 33 U.S.C. § 1342(1). "Any discharge of pollutants not allowed by an NPDES permit is illegal." (*San Francisco BayKeeper, Inc. v. Tosco Corp.*, 309 F.3d 1153 (9th Cir. 2002)). Under the Act, an NPDES permit is required when a discharger has (1) discharged (2) a pollutant (3) to waters of the United States (4) from a point source. (33 U.S.C. §§ 1311(a), 1342(a); see also *Comm. to Save Mokelumne River v. East Bay Mun. Util. Dist.*, 13 F.3d 305, 308 (9th Cir. 1993)).

Coverage under the General Industrial Permit for facilities such as Otay Metal Mart's, which fall under Sector P (SIC 5093) is mandatory. Otay Metal Mart conducts scrap metal recycling, and has been operating its business since at least April 19, 2011 unlawfully without a valid Permit. Notably, rusty metal parts are visibly strewn about the facility, without adequate best management practices, resulting in the discharge of heavy metals with each significant rain event. In addition, Otay Metal Mart's stockpiling and storage of materials results in the discharge of PCBs, oil and grease, lubricants, paint pigments or additives, heavy metals, ionizing radioactive isotopes, transmission and brake fluids, fuel, battery acid, lead acid, antifreeze, benzene, chemical residue, heating oil, petroleum products, solvents, ionizing radioactive isotopes, infectious/bacterial contamination, asbestos, metals, total Kjeldahl nitrogen, battery acid, oily wastes, and/or chemical residue. (See https://www.epa.gov/sites/production/files/2015-10/documents/sector_n_scraprecycling.pdf)

In order to obtain coverage under the Permit, "each facility operator must submit a Notice of Intent (NOI)." (Permit, p. 1). By failing to submit a NOI, the Facility has been operating in violation of the Clean Water Act since it began local operations in 2005. (See *Humboldt Baykeeper v. Union Pac. R.R. Co.*, 2006 U.S. Dist. LEXIS 88984 (N.D. Cal.2006) "[a]ny person who discharges or proposes to discharge pollutants ... and who does not have an effective permit, except persons covered by general permits ..., must submit a complete application to the Director", citing 40 CFR § 122.21)).

Otay Metal Mart's failure to file a NOI and its continued unpermitted discharge of pollutants constitute separate and distinct violations of the Clean Water Act. (*Humboldt Baykeeper, supra*, at p. 88984 [claim for unpermitted discharge of pollutants and another for a failure to obtain a NPDES permit were two claims with "distinct legal viability."]).

III. Remedies

Upon expiration of the 60-day period, CERF will file a citizen suit under Section 505(a) of the Clean Water Act for the above-referenced violations. During the 60-day notice period, however, CERF is willing to discuss effective remedies for the violation noted in this letter. If you wish to pursue such

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discussions in the absence of litigation, it is suggested that you initiate those discussions immediately. If good faith negotiations are not being made, at the close of the 60-day notice period, CERF will move forward expeditiously with litigation.

CERF's action will seek all remedies available under the Clean Water Act §1365(a)(d). CERF will seek to enjoin the illegal discharges from the Otay Metal Mart Facility. CERF will also seek the maximum penalty available under the law which is \$51,570 per day.

CERF may further seek a court order to prevent Otay Metal Mart from discharging pollutants. A strong or substantial likelihood of success on the merits of CERF's claim exists, and irreparable injuries to the public, public trust resources, and the environment will result if Otay Metal Mart continues its unpermitted discharge into Otay River, San Diego Bay, and the Pacific Ocean. Lastly, section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), permits prevailing parties to recover costs, including attorneys' and experts' fees. CERF will seek to recover all of its costs and fees pursuant to section 505(d).

IV. Conclusion

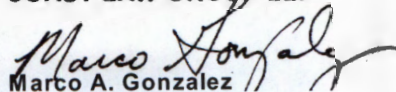
CERF has retained legal counsel to represent it in this matter. Please direct all communications to Coast Law Group:

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Livia B. Beaudin
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1140 S. Coast Highway 101
Encinitas, CA 92024
Tel: (760) 942-8505 x 102
Fax: (760) 942-8515
Email: marco@coastlawgroup.com

CERF will entertain settlement discussions during the 60-day notice period. Should you wish to pursue settlement, please contact Coast Law Group LLP at your earliest convenience.

Sincerely,

COAST LAW GROUP LLP


Marco A. Gonzalez


Livia Borak Beaudin

Attorneys for
Coastal Environmental Rights Foundation

Alexis Strauss Acting Regional Administrator U.S. EPA, Region 9 75 Hawthorne Street San Francisco, CA, 94105	Dave Gibson, Executive Officer Catherine Hagan, Staff Counsel San Diego Regional Water Quality Control Board 2375 Northside Drive, Suite 100 San Diego, CA 92108-2700
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